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In the

Supreme Court of the United States

OCTOBER TERM, 1966

No. 391

STATE FARM FIRE AND CASUALTY COMPANY and GREYHOUND LINES, INC.,
Petitioners,

vs.

KATHERINE TASHIRE, EVA SMITH, HARRY SMITH, LILLIAN G. FISHER, BARBARA McGALLIAND, DORIS ROGERS, GAIL R. GREGG, RICHARD L. WALTON, heir of SUE WALTON, and DONALD WOOD,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Petitioners State Farm Fire and Casualty Company and Greyhound Lines, Inc. pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on June 30, 1966.

CITATIONS TO OPINIONS BELOW

The district court did not issue an opinion. The opinion of the court of appeals is not yet reported. It is printed in Appendix B, infra 15.

JURISDICTION

The judgment of the court of appeals was entered on June 30, 1966, infra 20. Petitioners did not petition for rehearing. The jurisdiction of this Court is invoked under 28 USC § 1254(1).

QUESTIONS PRESENTED

1. Whether the district court had jurisdiction under 28 USC § 1335 (the Federal Interpleader Act) over a casualty insurer's action to determine its insured's liability for unliquidated claims, far exceeding the policy limits, of persons of diverse citizenship arising out of a multiple-claim catastrophe, and the claimants' respective rights to the proceeds of the policy.

2. Whether the district court had jurisdiction over the action under Rule 22(1) of the Federal Rules of Civil Procedure, there being diversity of citizenship between the insurer and all defendants.

STATUTE AND RULE INVOLVED

The statute involved is c. 646, 62 Stat. 931, 28 USC § 1335 (the Federal Interpleader Act), printed in Appendix A, infra 13.

The federal rule involved is Rule 22(1) of the Federal Rules of Civil Procedure, printed in Appendix A, infra 14.

STATEMENT

1. The Nature of the Action

Petitioner State Farm Fire and Casualty Company, an Illinois corporation, filed this action in the District Court for Oregon seeking a determination of (1) its liability under a policy issued in Oregon to defend and extend coverage to its insured, the Oregon driver of a pickup truck which collided with a Greyhound bus near Redding, California; and (2) an adjudication of claims against the driver for injuries, deaths and property damage resulting from the accident in amounts far exceeding the policy limits of $20,000. A sum equal to the policy limits was paid into court. Joined as defendants were the insured driver and the owner of the pickup truck, the bus company (petitioner Greyhound Lines, Inc.) and its driver, and the 35 bus passengers (or their representatives). The defendants are citizens of Oregon, California, Washington, South Dakota, Montana and Canada. There was diversity of citizenship between State Farm and all of the defendants and among the defendants themselves. The jurisdiction of the District Court was invoked under 28 USC § 1335 (the Federal Interpleader Act) and 28 USC § 1332 (diversity of citizenship) (R 1-3, 7).

2. The Interpleader Allegations of the Complaint

The complaint alleged that actions for damages totalling more than $1,100,000 were pending against the driver and there were numerous other claims and threatened lawsuits; that liability for damages resulting from the accident, if established against an insured, would substantially exceed the policy limits; and that State Farm did not believe it was obligated on the facts to defend or extend coverage to the driver and was not authorized to admit his responsibility for the accident. However, if the Court should determine that there was coverage, it would relinquish its claim to the fund created by the deposit to the extent needed to satisfy claims against him (R 3-5).

3. The Prayer for Relief

State Farm prayed for a decree adjudicating that it need not defend or extend coverage to the driver; in the alternative, it sought an order of interpleader determining that the appropriate defendants were adverse claimants to the fund and ordering those claiming injury or damage to interplead and establish their claims. It also prayed for an adjudication that the deposit of the policy limits discharged its responsibilities under the policy and for an injunction restraining all parties from instituting or prosecuting any other proceedings against State Farm or the driver (R 5-6).

4. Proceedings in the District Court

On May 3, 1965, after a hearing on an order to show cause, the district court entered an order under 28 USC § 2361 temporarily restraining defendants[1] from instituting or prosecuting proceedings in any state or federal court affecting the property or obligation involved in the action, and specifically proceedings against State Farm or any defendants who might constitute its insureds (R 148-150). Thereafter, the defendants who were appellants in the court below moved to dissolve the restraining order and dismiss the action, claiming that the court lacked jurisdiction over some of the defendants named in the action (R 178, 182). On June 1, 1965 their motions were denied, and they took interlocutory appeals under 28 USC § 1292(a)(1) (R 194, 204, 210).

5. Proceedings in the Court of Appeals

The court of appeals did not reach or decide the question of personal jurisdiction. It held that persons having unliquidated tort claims against the insured driver for more than the policy limits arising out of the accident were not "adverse claimants" to benefits of the policy under 28 USC § 1335(a)(1) or "persons having claims" against the insurer under Rule 22(1) FRCP,

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1. Except one Gladys Hart, who was served after the order was entered.

because they could not, under the terms of the policy and the law of California and Oregon, sue the insurer before reducing their claims to judgment (R 245-249; infra 15-19. It reversed the order appealed from, with instructions to dismiss the action for lack of jurisdiction over the subject matter (R 250; infra 20).

REASONS FOR GRANTING THE WRIT

1. The decision below is in conflict with the decision of another Court of Appeals on the same matter.

The decision of the court below is in direct and absolute conflict with the decision of the Court of Appeals for the Eighth Circuit in *Underwriters at Lloyd's, et al v. R. H. Nichols, et al,* also decided June 30, 1966. In *Nichols,* the court, in an exhaustive opinion by Chief Judge Vogel, sustained the district court's jurisdiction under Rule 22(1) FRCP over an interpleader action seeking (1) to adjudicate the plaintiffs' liability under a crop-dusting liability policy for unliquidated tort claims against their insured exceeding the policy limits; (2) to compel all claims against their insured to be litigated in the interpleader action; and (3) proration of the policy limits, which were tendered into court, among those whose claims should be sustained. The liability of the insured for any claims was denied.

The Eighth Circuit expressly rejected the Ninth Circuit's conclusion that unliquidated tort claims against

an insured for more than the policy limits are not "claims" by which the insurer "is or may be exposed to double or multiple liability" under Rule 22(1) FRCP unless the insurer is subject to a direct action under state law.[2]

> "We do not feel that the use of interpleader should or does depend upon the existence or absence of a direct action statute. * * *" (Infra 32)

The court also concluded that persons having such claims are "adverse claimants" to benefits of the policy under 28 USC § 1335, as amended in 1948, since they "are claiming or may claim to be entitled" to such insurance or benefits.[3] The full text of *Underwriters at Lloyd's v. Nichols* is printed in Appendix C, infra 21.

The conflict between these two decisions is so complete and so evident on the face of the opinions that extended analysis is felt to be unnecessary. A fundamental and important question of federal jurisdiction divides the two circuits and should be resolved by this Court.

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2. No direct action was available under Arkansas law. The district court, which was reversed in *Nichols*, had adopted the position of the Ninth Circuit. (DC ED Ark 1966) 250 F Supp 837.

3. The Federal Interpleader Act was only collaterally involved, because the defendants were all citizens of Arkansas. The court, however, held that it was *in pari materia* with Rule 22(1) and cited cases under the statute to support its decision (infra 26-27).

2. The Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

This case presents for decision the important question whether federal jurisdiction under the Federal Interpleader Act and Rule 22(1) FRCP extends to actions by insurers who, for their own protection and to secure the equitable apportionment of a limited fund, seek to adjudicate in a single proceeding their own and their insured's responsibility to persons whose injury and death claims arising from a multiple-claim catastrophe have engulfed the policy limits.

a. Mass torts whose effects extend beyond the lines of a single state are of increasing frequency under contemporary social and economic conditions. They present difficult problems to insurers, claimants and the courts, problems which are unquestionably within the purposes of interpleader.[4] The burden and expense of litigating the same issues of fact and law over and again in many different courts, the risk of contradictory findings or the application of differing substantive rules to persons similarly situated both as to liability and the fund, the danger to the insurer of multiple liability through the application of conflicting state rules regulating liens,

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4. The ineffectiveness of available procedures in the absence of a fund has been noted. See 63 Yale L J 493 (1954): *Procedural Devices for Simplifying Litigation Stemming from a Mass Tort.*

priority of judgments and equitable apportionment,[5] and the inequitable results of a race to judgment in which satisfaction of one claim will exhaust the fund—all are serious problems which accompany major catastrophes. In such cases, interpleader provides a forum and a single proceeding in which the insurer can be protected, closely-related claims can be litigated together, and the fund can be equitably apportioned. *Maryland Casualty Co. v. Glassell-Taylor & Robinson,* (CCA 5 1946) 156 F2d 519 at 523-524. The necessary balance between these important interests and a proper regard for the jurisdiction of state courts and the litigation preferences of the claimants can only be struck by this Court.

b. The confusion in the decisions of the lower courts is complete. Decisions in the district courts under the 1948 Judicial Code revision of 28 USC § 1335 and Rule 22(1) FRCP are so contradictory as to indicate the need for this Court to review the problem quite apart from the conflict between the Eighth and Ninth circuits. Interpleader has been upheld in *Pan American Fire & Casualty Company v. Revere,* (DC ED La 1960) 188 F Supp 474 and *Commercial Union Insurance Co. of New York v. Adams,* (DC SD Ind 1964) 231 F Supp 860.[6] It was

5. Anno: 70 ALR 2d 416 (1960); 8 Appleman on Insurance Law and Practice (1962 Ed) 331 (§ 4892); *Underwriters at Lloyd's v. Nichols,* supra, infra 23-24.

6. See also *A/S Krediit Pank v. Chase Manhattan Bank,* (DC SD NY 1957) 155 F Supp 30 at 33-34, aff'd (CA 2 1962) 303 F2d 648; *Standard Surety & Casualty Co. v. Baker,* (CCA 8 1939) 105 F2d 578; 3 Moore's Federal Practice (1964 Ed) 3023-3025 (¶ 22.08). The history of the act and the "may claim" clause is also discussed in *Underwriters at Lloyd's v. Nichols, infra* 26-30.

denied in *National Casualty Co. v. Insurance Co. of North America*, (DC ND Ohio 1964) 230 F Supp 617 and *Underwriters at Lloyd's v. Nichols*, supra, (DC ED Ark 1966) 250 F Supp 837, rev'd (CA 8 6/30/66) ___ F2d ___. The text writers have generally supported the views expresesd in *Revere* and *Adams*. See Chafee, *The Federal Interpleader Act of 1936: II*, 45 Yale L J 1161 at 1163-1167 (1936); 3 Moore's Federal Practice, supra, (1964 Ed) 3023-3025 (¶ 22.08); 2 Barron and Holtzoff (1961 Ed) 229 (§ 551).

The result is complete uncertainty over an increasingly urgent and important question of federal jurisdiction. That question should be resolved by this Court.

c. The reference by the court below to state law to determine who are "adverse claimants" under 28 USC § 1335 rested upon its narrow construction, unsupported by applicable authority,[7] of a statute which expressly confers jurisdiction over the interests of those who "may" as well as those who do claim policy benefits. It imposed the same construction upon the phrase "persons

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7. *Brillhart v. Excess Ins. Co. of America*, (1942) 316 US 491 at 496, cited by the court in support of its conclusion, was a declaratory judgment suit seeking to determine the plaintiff's liability on a reinsurance contract which was already the subject of litigation in the state court in garnishment proceedings brought by a judgment creditor. This Court held that whether a direct action will lie is a question of state law. It did not hold that the availability of a direct action is essential to interpleader jurisdiction.

having claims against the plaintiff" in Rule 22(1) FRCP.[8] Its decision, if permitted to stand without review, cannot fail to encourage a narrow view of federal interpleader which will greatly reduce its utility and does not reflect the views of this Court. *Texas v. Florida,* (1939) 306 US 398 at 405-407.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioners

July 25, 1966

8. *Security Trust & Savings Bank of San Diego v. Walsh,* (CCA 9 1937) 91 F2d 481, cited by the court in support of its construction of the rule, was decided a year before the rules went into effect.